



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

February 4, 2003

Via Facsimile - 458-7751

Susan K. Steeg, General Counsel
Texas Department of Health
1100 W. 49th Street
Austin, Texas 78756-3199

Dear Ms. Steeg:

You have asked whether health care professionals involved in the administration of the smallpox vaccine are eligible to receive benefits under the Texas Workers' Compensation Act. Although the Office of the Attorney General cannot commit in advance that any employee will qualify for employee benefits under the Texas Workers' Compensation Act, it is anticipated that under the circumstances you present such health care professionals would be eligible for workers' compensation benefits.

It is our understanding that health care professionals will be administering the smallpox vaccine as part of their duties during their assigned work hours and at assigned work locations. It is also our understanding that certain health care professionals will be receiving the small pox vaccines with their employer's consent or at the employer's request as part of their work-related duties. Please be advised that the question you pose has already been addressed in the case of *City of Austin v. Smith*, 579 S.W.2d 84 (Tex. Civ.App.—Fort Worth 1979, no writ). The *Smith* court held that a firefighter classified by the city in a "priority group" to receive swine flu inoculation by virtue of his occupation was sufficient to support a finding that the fireman was injured in the course and scope of his employment. In reaching its decision, the *Smith* court noted that the firefighter's supervisors had expressed their desire that the firefighter receive the inoculation and that such inoculation was received while the firefighter was on duty at the city owned facility.

Based on the facts presented to us and based on the holding in the *Smith* case referenced above, the Office of the Attorney General would anticipate that health care professionals involved in the administration of the smallpox vaccine would be eligible to receive workers' compensation benefits.

Please let me know if you have any additional questions.

Sincerely,

Jeffrey S. Boyd
Deputy Attorney General for Litigation

JSB:nh